

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

VEROBLUE FARMS USA INC.,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION No. 3:19-cv-00764-L
	§	
LESLIE A. WULF, BRUCE A. HALL, JAMES	§	
REA, JOHN REA, and KEITH DRIVER	§	
Defendants/Counterplaintiffs,	§	

**PLAINTIFF VEROBLUE FARMS USA, INC.'S MOTION FOR LEAVE TO
AMEND ITS AMENDED COMPLAINT**

In accordance with Rule 15(a) of the Federal Rules of Civil Procedure and Local Civil Rule 15.1, Plaintiff Veroblue Farms USA Inc. (“VBF”) files this motion for leave to amend its Amended Complaint (“Motion for Leave”) [Dkt. 9]. VBF respectfully shows the Court as follows:

1. VBF filed this lawsuit on July 31, 2018 in the Northern District of Iowa against Defendants, asserting claims for breach of fiduciary duty, fraudulent concealment, fraudulent misrepresentation, and constructive fraud, among other claims, against Defendants, who are former officers and/or directors of VBF. [Dkt. 1].

2. On August 15, 2018, VBF filed an Amended Complaint. [Dkt. 9]. This is the live complaint.

3. This case was transferred to this Court on March 27, 2019. [Dkts. 50, 51].

4. Shortly after transfer of this case, on April 10, 2019, the Founder Defendants filed their Answer and Affirmative Defenses to the Amended Complaint and Third-Party Claims [Dkt. 66], which is their live answer. In this same pleading, the Founder Defendants included a Third-Party Complaint, adding seven new parties to this case: Eva Ebstein, Jens Haarkoetter, Bjorn Thelander, Anders Wester, Norman McCowan, Dr. Otto Happel, and Alder Aqua, Ltd. (“Alder”)

(collectively, the “Third-Party Defendants”). To date, none of the Third-Party Defendants has been served.

5. In lieu of filing an answer, Defendant Driver re-filed his prior Motion to Dismiss for Failure to State a Claim which the transferor court reserved for this Court to decide. [Dkts. 67-69]. As a result, this same motion now appears twice on this Court’s docket. [Dkts. 20, 67-69].

6. On April 23, 2019, this Court vacated the prior scheduling order entered by the transferor court and ordered the parties to meet and confer in accordance with Federal Rules of Civil Procedure 16(b) and 26(f), and submit a status report order to the court no later than May 8, 2019, which is to include a proposed discovery plan, among other matters specified by the Court. [Dkt. 84]. Accordingly, as of the date of this motion, there is no scheduling order in place.

7. VBF seeks leave to file its second amended complaint. Since the last amendment, VBF has conducted written and oral discovery which has supplied the factual basis for the supplemental and amended allegations, assertion of additional claims, and the naming of new parties in the proposed second amended complaint.

8. Consistent with Local Civil Rule 15.1, a copy of VBF’s proposed second amended complaint is attached to this motion as Exhibit A. As discovery is still ongoing, the proposed second amended complaint attached as Exhibit 1 is subject to further change, to which VBF will notify the Court. Also attached to this motion as Exhibit B is a copy of a redline comparing the proposed second amended complaint to the Amended Complaint.

9. Under the Federal Rules of Civil Procedure, “[t]he court should freely give leave when justice so requires.” FED. R. CIV. P. 15(a); *see also, e.g., Lone Star Ladies Inv. Club v. Schlotzsky’s Inc.*, 238 F.3d 363, 367 (5th Cir. 2001). Leave to amend should be denied only in the likelihood of prejudice or in the event some other procedural abuse is shown. *Engle v.*

Teleprompter, 732 F.2d 1238, 1242 (5th Cir. 1984). There has been no undue delay, bad faith or dilatory motive on the part of Plaintiff or its counsel that would warrant denial of this motion. Moreover, no prejudice will inure to the detriment of the Defendants by the granting of this amendment. Indeed, seven new parties were added to this litigation by the Founder Defendants last month on April 10, 2019. Furthermore, this motion is not untimely, as the existing scheduling order has been vacated and there is currently no scheduling order in place.

10. This motion and the proposed second amended answer are timely presented to the Court, and VBF seeks leave to amend only so that justice may be served, not for the purpose of delay.

WHEREFORE, Plaintiff respectfully prays for an order of this Honorable Court granting its Motion for Leave to Amend its Amended Complaint and permit Plaintiff to file its Second Amended Complaint, attached as Exhibit A, with summons to issue to the newly-named Defendants, immediately. Plaintiff prays for such other and further relief as the Court may deem just and proper.

Dated: May 13, 2019

/s/ Jasmine S. Wynton

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ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Plaintiff conferred with counsel for Defendants Leslie A. Wulf, Bruce A. Hall, James Rea, John Rea, and Keith Driver on May 13, 2019, and counsel for Defendants stated that they are opposed to the relief sought in this motion.

/s/ Nicole Williams

Nicole Williams

CERTIFICATE OF SERVICE

The undersigned certifies that on May 13, 2019 this document was filed and served to all counsel of record via the Court's ECF system.

/s/ Jasmine S. Wynton

Jasmine S. Wynton